

THE IDAHO BEEF CATTLE ENVIRONMENTAL CONTROL MEMORANDUM OF UNDERSTANDING

A. OBJECTIVE

The objective of this Memorandum of Understanding (MOU) is to define the roles of the signatory agencies in regulating beef cattle animal feeding operations (beef cattle AFOs) in Idaho. This MOU sets forth working arrangements between the Idaho State Department of Agriculture (ISDA), the Idaho Department of Environmental Quality (IDEQ), the United States Environmental Protection Agency (EPA), and the Idaho Cattle Association (ICA) (herein after referred to collectively as “the parties”), to assure compliance with the federal Clean Water Act, 33 USC §§ 1251 - 1387 (CWA) and the Beef Cattle Environmental Control Act, Chapter 49, Title 22, Idaho Code (“the Act”).

These working arrangements are designed to reduce duplicative inspection and compliance efforts, increase the frequency of inspections of beef cattle animal feeding operations and provide a sound inspection and compliance program, in order to prevent pollution and protect water of the state and other natural resources in an environmentally proactive and economically achievable manner.

All parties to this MOU encourage the state of Idaho to obtain a delegated National Pollutant Discharge Elimination System (NPDES) permit program from EPA.

B. SUMMARY OF AGENCY ROLES

ISDA is the primary state agency to regulate beef cattle animal feeding operations (AFOs) to ensure the protection of Idaho’s natural resources, including waters of the state, to accomplish the goals of the Act.

IDEQ is the state agency responsible for the establishment of ambient environmental standards and the overall achievement of these standards.

EPA is the federal agency responsible for implementation of the NPDES program in the state of Idaho.

C. BACKGROUND

Beef cattle animal feeding operations, as defined in the Act, are already subject to regulation by state and federal agencies. ISDA routinely inspects beef cattle AFOs, and IDEQ and EPA also conduct inspections on these beef cattle AFOs.

Beef cattle AFOs, regardless of whether the AFO actually has an NPDES permit, are responsible to construct, maintain and operate their facilities to prevent contamination of waters of the state by achieving the conditions specified in the Act and the Idaho State Waste Management Guidelines for Animal Feeding Operations (Guidelines) or the Idaho General NPDES Permit, 62 Fed. Reg. 20177 (General Permit) or any individual NPDES permits, whichever is applicable.

Protection of waters of the state will be enhanced through a more cooperative, educational, and efficient approach.

D. AGREEMENT

The parties to this MOU agree to the following roles and responsibilities:

The **ISDA** will:

1. Regulate beef cattle AFOs to accomplish the goals of the Act. ISDA shall regulate facilities that discharge or have the potential to discharge animal waste to the waters of the state.
2. Develop rules, operating guidelines, and inspection protocols for the purpose of carrying out the provisions of the Act.
3. Conduct periodic inspections of all beef cattle AFOs that include evaluation of waste collection, storage, treatment, handling, and management procedures to determine compliance with the Act and the General Permit or the Guidelines. Inspections will include visual assessment of the facilities followed by a written inspection report. The initial focus of the program will be those beef cattle AFOs that have the greatest potential to impact the environment.
4. Take the lead role in conjunction with IDEQ, EPA, NRCS and SCC in development and review of Best Management Practices (BMPs), for beef cattle AFOs, which protect Idaho's natural resources. Approved BMPs are those listed in the Guidelines, and other practices listed in the Idaho Agricultural Pollution Abatement Plan and the Act.
5. Require that wastewater storage and containment facility plans and nutrient management plans for beef cattle AFOs are submitted and approved in accordance with the standards and schedules specified in the Act.
6. Document all non-compliance including actual and potential discharge violations. In the case of discharge violations, documentation shall include a description of the cause of the discharge, the dates and times of the discharge, description of any samples taken and identification of any required corrective actions.

7. Conduct enforcement actions against beef cattle AFOs, within agency discretion, in accordance with the Act. Such actions may include, but not be limited to, issuance of compliance schedules for improvements to and/or assessment of penalties on those beef cattle AFOs that do not meet the standards specified in the Act, the Idaho General NPDES Permit or the Guidelines. ISDA will consult with IDEQ prior to taking enforcement actions solely for violations of state water quality standards.
8. Immediately notify IDEQ of conditions at beef cattle AFOs that may pose an imminent and substantial danger to public health or the environment. Such notification shall not relieve ISDA of its obligation to implement and assure compliance with the Act and this MOU.
9. Respond to complaints and information regarding waste management relative to Beef Cattle AFOs whether on or off the facility.
10. Participate in annual reviews with the parties and work cooperatively with the parties to take appropriate follow-up actions to achieve the objectives of this MOU. Prepare and submit an annual report to IDEQ, EPA and ICA prior to the annual review. The report will include a description of activities for the past year including, but not limited to: the number and general location of inspections conducted; summaries of non-compliance findings; numbers, types and status of enforcement actions; number of discharges; and a review of work plan accomplishments. The report will also include an annual work plan describing those activities planned for the future.
11. Provide technical assistance to beef cattle AFOs, as resources allow, including but not limited to, the location, design, and construction of wastewater storage containment facilities and the development of nutrient management plans. As appropriate, ISDA may provide such technical assistance through arrangements with other agencies or referrals to qualified professionals.
12. Assume associated regulatory costs of the beef cattle AFO program with legislatively approved personnel and budgets, and continue to seek funding to implement the Act and the responsibilities identified in this MOU.
13. Work with EPA and IDEQ towards obtaining a delegated NPDES permit program for the state of Idaho.
14. Develop, seek support for, and continue programs that promote sound environmental stewardship through educational efforts, informational materials, on-site technical assistance visits and other efforts.
15. ISDA and IDEQ have developed a separate written agreement regarding all cattle feeding operations not specifically covered by this four party MOU.

The **IDEQ** will:

1. Provide training, information, education, and technical assistance for waste handling at beef cattle AFOs to the ISDA, upon request, to the extent of available resources.
2. Consistent with the Act, conduct inspections only when requested by ISDA or in situations which present an imminent and substantial danger to human health or the environment, after notifying ISDA. In situations where imminent and substantial danger to human health or the environment is identified, IDEQ will notify EPA.
3. Report and direct all complaints regarding beef cattle AFOs to ISDA except as provided in paragraph 2 of this section.
4. Initiate enforcement actions, within agency discretion, under the authority of Idaho Environmental Protection and Health Act, only as a direct result of the investigative actions outlined in paragraph 2 of this section or upon request from ISDA.
5. Consult with ISDA before certifying discharges from beef cattle AFOs as provided under 33 USC § 1341 (Section 401 of the CWA) as provided in the Act.
6. Work with EPA and ISDA towards obtaining a delegated NPDES permit program for the state of Idaho.
7. Participate in annual reviews with the parties and work cooperatively with the parties to achieve the objectives of this MOU. The annual review may include file reviews by the agencies as well as inspection of a small agreed upon number of beef cattle AFOs across the state by a team representing the parties.
8. IDEQ and ISDA have developed a separate written agreement regarding all cattle feeding operations not specifically covered by this four party MOU.
9. When IDEQ determines a violation of ambient environmental standards has occurred in an area where beef cattle AFOs may be contributing to pollutants of concern, IDEQ shall notify ISDA and ISDA shall collect and provide all available pertinent information regarding the beef cattle AFOs in the area to IDEQ. If sufficient information is not available, IDEQ will request that ISDA develop such information. If ISDA is unable to develop the appropriate information, IDEQ may initiate any necessary actions to collect the information.

The **EPA** will:

1. Within thirty (30) days of the effective date of this MOU, provide the parties with a written summary of EPA beef cattle AFO inspections in Idaho including: general locations, enforcement actions, penalties assessed and other pertinent information in order to provide a historical reference and baseline for assessing future activity.

2. In a timely manner, review and act upon NPDES Permit notices of intent and applications by Idaho beef cattle AFOs.
3. Discontinue routine compliance inspections and subsequent enforcement actions on beef cattle AFOs during the term of this agreement. Consistent with General Provisoin E3 of this MOU, and EPA's obligations under the Clean Water Act, EPA retains the right to inspect and enforce after due notification to ISDA.
4. In consultation with ISDA develop a transition plan that will identify all NPDES compliance actions begun but not completed by EPA and identify the manner in which they will be addressed. The plan will acknowledge to the degree possible those actions that can be referred to ISDA for follow-up.
5. Report and direct complaints regarding beef cattle AFOs to ISDA except as provided in paragraph 3 of this section.
6. Provide training, information, education, and technical assistance for waste handling at beef cattle AFO to the ISDA upon request, to the extent of available resources.
7. Participate in annual reviews with the parties and work cooperatively with the parties to achieve the objectives of this MOU. The annual review may include file reviews by the agencies as well as inspection of a small agreed upon number of beef cattle AFOs across the state by a team representing the parties. Information collected by EPA during joint inspections or other reviews will be used for the purpose of providing feedback to the parties regarding the effectiveness of the MOU. EPA does not intend to use information resulting from the joint inspections and other reviews to initiate independent enforcement actions except as provided in paragraph 3 of this section. EPA will submit a written report of its review of the beef cattle AFO program to all parties.
8. Work with IDEQ and ISDA towards obtaining a delegated NPDES permit program for the state of Idaho.
9. Work with the parties to seek federal and other sources of funding, including grants, which increase outreach, education and other necessary improvements, related to environmental conditions at beef cattle AFOs.

The **ICA** will:

1. Continue to promote sound environmental stewardship through educational programs, informational materials, on-site visits and other efforts.
2. Encourage recognition of beef cattle AFOs as part of existing and/or new environmental stewardship award programs.

3. Participate in MOU reviews with the parties, make recommendations for improvement of the program, and work cooperatively with the parties to take appropriate actions to achieve the objectives of this MOU.
4. Continue to actively support full funding to effectively implement and accomplish the goals of the Act and this MOU.
5. Work with EPA, ISDA and IDEQ towards obtaining a delegated NPDES permit program for the state of Idaho.

E. GENERAL PROVISIONS

1. Meetings between ISDA, IDEQ, EPA, and the ICA will be the primary method for discussion of program progress. The ISDA, IDEQ, and EPA may also identify those instances where enforcement action may be appropriate. An annual review meeting will be held, during the third quarter of the calendar year, between the ISDA, IDEQ, EPA and the ICA to address issues regarding waste management and implementation of this MOU.
2. ISDA, IDEQ and EPA files related to implementation of this MOU will be available under applicable law for inspection and copying. Each agency shall respect the confidentiality of files or materials designated CONFIDENTIAL in accordance with federal and state regulations. This provision shall not be construed to authorize or require the disclosure of agency files to third parties except as required by federal and state laws.
3. Nothing in this MOU shall be construed as surrendering existing statutory or regulatory authority of the agencies. The IDEQ and the EPA recognize the lead role of the ISDA in regulating beef cattle AFOs as set forth in the Act and this MOU and will exercise their authorities accordingly.
4. Nothing in this MOU shall be construed to release beef cattle AFOs from complying with applicable local, state, and federal environmental statutes, regulations, permits or consent orders.
5. Beef cattle AFOs operating in compliance with the Act and approved best management practices shall not be subject to state enforcement action for violation of state water quality standards except in the event of imminent and substantial danger to public health or the environment as provided in Chapter 1, Title 39, Idaho Code. However, ISDA shall evaluate and modify such best management practices as necessary.
6. This MOU does not apply to beef cattle AFOs located within the exterior boundaries of Indian Reservations within the state of Idaho. The parties of jurisdiction on reservations may negotiate a separate MOU to address beef cattle AFOs located within the exterior boundaries of Indian Reservations.

7. This MOU, when signed by each party, will be effective from the date of the last signature through the same date, 2005 and shall continue thereafter on a year-to-year basis until and unless (1) it is revoked by any one of the signatory parties following 60 day notice to all parties setting forth the party's reason(s) for terminating the MOU or (2) the state of Idaho obtains a delegated NPDES permit program. This MOU may be amended through mutual written agreement of the parties.

SIGNATORY PARTIES:

Patrick A. Takasugi, Director
Idaho Department of Agriculture
Date: _____

C. Stephen Allred, Director
Idaho Department of Environmental Quality
Date: _____

Chuck Findley, Acting Regional Administrator
Region 10, U.S. EPA
Date: _____

G. C. Garatea, President
Idaho Cattle Association
Date: _____